

interfered. “Property interests...are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law.” *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 572 (1972).

Even assuming, as plaintiff alleges, that G.G.C. would have scored in or above the 97th percentile had the admissions test been properly administered, she would not be able to show a property interest in being placed in the specific gifted and talented program. The Chancellor’s regulation to which plaintiff cites does not create an entitlement to her placement in the program. *See* Chancellor’s Regulation A-101. Siblings of students already pre-registered or enrolled at an elementary school at the time of application submission are given sibling *priority* for admission into elementary school. However, her placement would not have been automatic, even with the sibling priority, and the qualifying score. As the City points out, “[i]t is entirely possible that the available seats at Anderson would have been filled by siblings with qualifying scores in the 99th and 98th percentiles, before G.G.C. could have been placed.” Reply Mem. of Law, at 3.

The Department of Education never created a property interest, because there was never any guarantee that G.G.C. would be placed at the Anderson School, even had she tested in the eligible range. *Cf. Kapps*, 404 F.3d at 115 (applicant for a benefit only has a protected interest in the receipt of that benefit when the statutory scheme “*mandates*” the award of the benefit upon satisfaction of specified criteria) (emphasis added); *Basciano v. Herkimer*, 605 F.2d 605, 609 (2d Cir. 1978) (same). No statutory scheme mandates G.G.C.’s securing a seat at the Anderson School.

Furthermore, “placement selection” of the type “involved in this action does not involve ‘basic constitutional values’” that would give rise to a “constitutionally protected interest in attending the school of one’s choice.” *Johnpoll v. Elias*, 513 F. Supp 430, 430 (E.D.N.Y.


1980). “Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values.” *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968).

Plaintiff is pursuing a claim pending before the New York State Commissioner of Education concerning the very same G&T Assessment and score alleged in this Complaint. She fails to state a constitutional claim upon which relief may be granted by this Court.

For the foregoing reasons, the Defendant’s motion to dismiss is granted. The Clerk shall enter judgment for defendants, dismissing the complaint, and mark Document No. 13 terminated. The argument scheduled to be held March 8, 2106 is cancelled.

SO ORDERED.

Dated: March 7, 2016
New York, New York


ALVIN K. HELLERSTEIN
United States District Judge